

FILED
U.S. DISTRICT COURT
2009 AUG 19 P 3:18

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

EDWARD MORALES

Plaintiff(s),

vs.

CONTINENTAL FINANCE COMPANY,
LLC and FIRST BANK OF DELAWARE,
INC.

Defendant(s),

SUPPLEMENTAL ORDER RE:
REPORT AND
RECOMMENDATION

Case No. 1:09-cv-6 CW

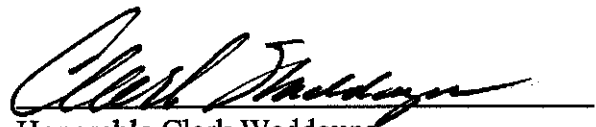
By Order dated July 8, 2009, the court required Continental Finance to provide supplemental materials to substantiate representations made in the memoranda in support of the Motion to Stay Proceedings and Compel Arbitration. The Order allowed the plaintiff fifteen (15) days after Continental's filing to file any objection and file other supporting documentation or affidavits. On July 23, 2009, Continental filed supplemental materials and analyses in response to the court's Order. The plaintiff has not submitted any additional filings. In the supplemental materials, Continental included the Declaration of William Knotts, the Chief Marketing Officer of Continental Finance. By the declaration, Mr. Knotts testified that attached to the declaration as Ex. A was a true and correct copy of the Terms and Conditions that an applicant must

acknowledge and consent to when applying for credit that was enforced during the applicable period between April 4, 2007 and December 31, 2007. Mr. Knotts further testified that an applicant could not complete submission of a credit card application unless such applicant checked the box in the online application, indicating his consent to the electronic disclosures and to the terms and conditions. He further testified that these were the terms and conditions that were in use at the time that the plaintiff, Edward Morales submitted his application. Finally, as Ex. B, Mr. Knotts attached a true and accurate copy of the MasterCard Agreement that was in place during the relevant time period. Further, Continental submitted the Affidavit of Jeffrey R. Olsen, confirming a telephone conversation that he had with Edward Morales, in which Mr. Morales stated that he was the same Edwardo Morales referred to in the previous memoranda and documents submitted in support of the motion.

Based on the additional evidence submitted in support, the court ADOPTS the Report and Recommendation of Magistrate Judge dated June 17, 2009. The Motion to Stay Proceedings and Compel Arbitration is GRANTED.

DATED this 19th day of August, 2009.

BY THE COURT:


Honorable Clark Waddoups
U.S. District Court Judge